

DOCUMENT RESUME

ED 169 600

CS 502 496

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TITLE The Alger Hiss Perjury Trials: A Dramatic Perspective on Legal Rhetoric.
PUB DATE May 79
NOTE 17p.; Paper presented at the Annual Meeting of the Eastern Communication Association (Philadelphia, Pennsylvania, May 5-7, 1979)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Communication (Thought Transfer); *Court Cases; Court Litigation; Credibility; Crime; *Drama; *Persuasive Discourse; *Rhetoric
IDENTIFIERS *Hiss (Alger)

ABSTRACT

The two Alger Hiss perjury trials of 1949 provide an opportunity to compare two different aspects of trial drama: courtroom drama and crime drama. Much recent scholarship on legal rhetoric has acknowledged the dramatic quality of courtroom communication, which results in part from the physical appearance of the courtroom and the style of language used. The dual quality of trial drama stems not only from the contest between the plots of the prosecution and the defense, but from the tension between the immediate courtroom scene and the distant scene of the crime. In the first Alger Hiss perjury trial, the prosecution focused on the testimony and truthfulness of Hiss's accuser, Whittaker Chambers, thus stressing the courtroom drama rather than the crime drama; the defense then attempted to discredit Chambers and portray Hiss as honorable. This trial resulted in a hung jury. In the second trial, the prosecution focused attention on the crime scene, agency, and act, rather than on the courtroom personalities of Hiss and Chambers. This shift in attention worked to Hiss' disadvantage, as the jury found him guilty. The examination of these trials suggests that an understanding of courtroom communication can be enhanced if rhetorical critics occasionally employ a dramatic perspective.
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THE ALGER HISS PERJURY TRIALS:

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Kurt W. Ritter

A DRAMATIC PERSPECTIVE ON LEGAL RHETORIC

Kurt W. Ritter

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A Paper Presented at the Eastern Communication
Association Convention, May 5-7, 1979, Philadelphia.

Thurman Arnold, one of the more influential leaders of the school of legal realism, remarked in his autobiography that trials are "like the miracle or morality plays of ancient times. They dramatically present the conflicting moral values of a community in a way that cannot be done by logical formalization." From this perspective, a trial becomes "a symbol of public morality." This is true not just in certain celebrated cases such as the "Chicago Seven Conspiracy" trial and the Rosenberg espionage trial, but as a general rule. Arnold contends that throughout history the appearance of justice and government morality have been symbolized by the use of the criminal trial." In a sense then trials may be viewed as "dramas on the courtroom stage."¹ Certainly much recent scholarship on legal rhetoric has acknowledged the dramatic quality of courtroom communication, and successful attorneys are hardly unaware of the theatrical aspects of a trial. Since the Alger Hiss perjury trials contain considerable elements of drama, we might profitably re-examine those forensic events from a dramatic perspective. In fact, those trials provide an opportunity to compare two fundamentally different aspects of trial drama. In analyzing the two

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Hiss trials as dramas, I will have little new to add to the known facts of the case. Despite the controversy over Allen Weinstein's monumental work on the Hiss case (especially the charges and counter-charge exchanged in the pages of The Nation and The New Republic), his work will long remain the definitive study of the case.² Professor Weinstein, however, is a student of history rather than rhetoric. I take as my task the modest effort of attempting to suggest what the facts of the Hiss trials (as revealed by Weinstein) tell us about the influence of drama in courtroom rhetoric. In short, I would like to advance the tentative hypothesis that the differences in the verdicts of the two juries may be accounted for by the difference in the dramatic form of the two trials. Hiss and his attorneys won a hung jury in the first trial, I suggest, because they were participating in a courtroom drama which featured the strongest aspects of their case. They lost the second trial because they were forced to participate in a crime drama (played out on the courtroom stage) which emphasized the weakest part of their case.

Before turning to a dramatic analysis of each trial, however, I would like to develop the notion that trials are dramas and that, therefore, a rhetorical analysis of a trial might profitably employ a dramatic perspective.³

I

Trial as Drama

An appreciation of the trial as a drama is hardly restricted to scholars such as Hugh Duncan and Murray Edelman.⁴ Practicing lawyers

sometimes even advise their colleagues on the need for attention to staging a trial. Jacob A. Stein, a member of the District of Columbia Bar and a Fellow in the American College of Trial Lawyers, recently echoed Thurman Arnold's notion of a trial as a morality play. Writing in the trade journal Litigation (a publication of the American Bar Association), Stein revised Arnold's concept of trial drama slightly so as to remove the necessity of it serving only the political interests of the state. In giving suggestions for effective closing statements, Stein warns that the presentation of the case will have much more effect than the attorney's summation:

If thoughtfully arranged, the trial may parallel a morality play. This art form arose in England in the 1500s. It has continued in one way or another ever since. Each character in the morality play took the name of the vice or virtue he was to personify. The play divided itself into three parts: first the prologue, then the play itself, and finally the epilogue. You see the similarity to the pattern of the jury trial. You tell them what you are going to do. You do it. You then tell them what you did. The prologue states how vice is overcome by virtue. Then the play itself takes place and virtue does overcome vice. In the epilogue, the narrator comes on stage and announces that vice has been overcome by virtue. If the trial takes that course, everything has been done to insure victory. Vice threatens to win because of the unscrupulous tactics of the defendant, and then suddenly virtue is able to overcome his cunning. If you can bring such a thing off, you have participated in an art form with a long and great tradition.⁵

The dramatic quality of a trial is heightened by two other factors: the physical appearance of the courtroom itself and the style of language used in the law. Burke has remarked that "it is a principle of drama that the nature of acts and agents should be consistent with the nature of the scene. . . ."⁶ Since the courtroom is the scene of the drama, it is hardly surprising that it is usually constructed to serve as the stage for an important ritual. Murray Edelman notes in The Symbolic Uses of Politics that political settings are "unabashedly built up to emphasize a departure from men's daily routine, a special or heroic quality in the proceeding they are to frame. Massiveness, ornateness,

and formality are the most common notes struck in the design of these scenes, and they are presented on a scale which focuses constant attention upon the difference between every day life and the special occasion when one appears in court, in Congress, or at an event of historic significance." Commenting specifically on the scene of legal acts, Edelman remarks that "the judicial bench and chambers, formal, ornate, permanent and solid, lined with thick tomes, 'prove' the deliberateness, scholarliness, and judiciousness of the acts that take place in them, even though careful study of some of these acts in a university or newspaper office . . . may indicate that they were highly arbitrary, prejudiced, or casual."⁷

Even the language of the law conspires to achieve "the uncommon touch." The use of stilted phrases, technical argot, French, Latin and Old English phrases tend to make the language of the law wordy and pompous. David Mellinkoff, a UCLA law professor and an authority on legal language, has noted that "there is a ceremonial quality to the language of the law achieved by the use of 'formal words'--words set apart from the language of the street or the locker room" or everyday life. The style has been described as "solemn, sacerdotal, dignified, and 'assiduously stilted'."⁸ Hence, the very words of the judge and attorneys reinforce the ritualistic and dramatic qualities of a trial.

As Professor Jane Blankenship has noted, to use a metaphor is to take an attitude, to define a point of view, to look for some things and ignore others.⁹ This is true in our talk about the law as well as our talk about politics. Because we think of trials as a type of "real world drama," our own metaphor invites us to look for the actors, to seek out a plausible plot or story, and ultimately to judge the participants according to the moral qualities which they assume in their roles

in the play. In this sense, the drama is not presented to the jury as an accomplished fact; the jury actually pieces it together from the more or less explicit portrayals of the actors.

Obviously, each trial has at least two potential dramas--that of the prosecution or plaintiff and that of the defense. Clarence Darrow, for example, frequently took up the defense of unpopular clients whom the prosecution was casting into a drama of disobedience and punishment. Rather than accept the role of the accused for his clients, Darrow characteristically recast the drama into a struggle of the underdog in which his client was the victim--a victim of a vicious prosecution, or a victim of society, or both.¹⁰ The dual quality of trial drama, however, is much more fundamental than merely a contest of two plots. There is also a constant tension between two scenes: the immediate courtroom scene and the distant scene of the crime. It is this latter distinction between a courtroom drama and a crime drama which provides a means of analyzing the two perjury trials of Alger Hiss.

Richard Harbinger, a California attorney, has set forth a careful and well informed discussion of the notions of a courtroom drama and a crime drama in the pages of the legal journal Judicature. In commenting upon the inherently dramatic quality of trials, Harbinger remarks that "when one observes an adversary trial, he [or she] sees a play; when he observes a while longer, he perceives a play within a play," as the actors in the courtroom drama try to recreate the crime for the benefit of the jury. In effect, he argues, it is not unlike great dramas such as Oedipus Rex and Hamlet in which the theatre audience comes to know of the controlling event of the play: a crime that was committed off-stage at an earlier time. In short, Harbinger observes: "this is the essential, ineluctable form of the adversary trial: a 'play without' [the courtroom

drama] and a 'play within' [the crime drama]. And from this form all else naturally proceeds; double plots, double casts, double settings. double audiences and double effects."¹¹

II

The First Trial: A Courtroom Drama

When the first perjury trial of Alger Hiss opened on May 31, 1949, the jury was invited to participate in a courtroom drama which focused upon the "here and now" of the Federal Courthouse in Manhattan. The prosecution had decided to pit its star witness, Whittaker Chambers, against the defendant in order to persuade the jury that Alger Hiss had committed perjury when he testified under oath that he did not know Chambers, that he had never been a member of the Communist Party, and that he had not participated in espionage against the United States on behalf of the Communist Party. The involvement with the Communist Party was said to have begun in the 1930s when Hiss was a member of FDR's "New Deal" administration. The perjury was alleged to have occurred on December 15, 1948, when Hiss testified before a grand jury. But the Assistant U.S. Attorney, Thomas Murphy, did not make a portrayal of those Acts the heart of the prosecution case. As he observed to the jury: "We are not going to give you photographs of the man lying."¹² While much evidence of the crime was presented, the keystone of the prosecution case would be the testimony of Hiss' accuser: Whittaker Chambers, a former member of the Communist Party underground apparatus in the United States, an apostate anti-Communist and an editor for Time Magazine. Murphy could hardly have been more pointed in direct-

ing the jury's attention to the courtroom drama: "I want you to examine Chambers. I want you to listen attentively; watch his conduct on the stand. . . because if you don't believe Chambers then we have no case under the federal perjury rule . . . where you need one witness plus corroboration, and if one of the props goes, out goes the case."¹³

By stressing the courtroom drama rather than the crime drama, the prosecution invited the jury to decide the case based upon the performances of Chambers and Hiss in front of them, not on the basis of the alleged Acts which had brought forth the indictment. Hence, the focus was on the Agents--the heavy-set, unattractive former Communist, and the trim, Ivy League lawyer. As Harbinger has pointed out, a courtroom drama can be considered a less reliable guide for a jury's decision than a crime drama, for "if the courtroom drama has our attention, the crime drama will not. We will not only not know what we think about the crime drama, we will not know how we feel about it."¹⁴ Most courtroom dramas become almost solely a clash between contending attorneys rather than between the defendant and the prosecution witness. In the Leopold and Loeb trial, for example, Clarence Darrow's attacks on the prosecuting attorney, Robert Crowe lead the State's Attorney to devote much of his summation speech to a defense of his personal character.¹⁵ The first Hiss trial was an exception in this regard, for the attention of the jury clearly focused upon the defendant and his accuser, as well as upon the leading attorneys.

The center of attention, nevertheless, remained in the courtroom rather than at the scene of the alleged Acts. The natural consequence was for the jury to be concerned with the Acts in the courtroom: Who was lying? Who was telling the truth? When Motive was considered, it was not so much

a question of Hiss's motive for perjury in the crime drama, but Chambers' motive for accusing Hiss in the courtroom drama. (The defense called a series of witnesses to suggest that Chambers was mentally unstable, if not mentally ill.) Moreover, the chief defense attorney, the flamboyant Lloyd Paul Stryker, kept attention riveted upon the "here and now." His remarks to the jury concerning Chambers' character suggest that he was only too pleased to have the case decided on the basis of a courtroom drama rather than upon the crime drama. "Who is the accuser?" Stryker asked. "He is a man who styles himself as J. Whittaker Chambers. He began changing names early. I think the name given to him was J. Vivian Chambers Now who and what is this man, this accuser of ours? Who is he? What is he?" After reviewing Chambers' membership in the Communist Party, Stryker concluded: He "was a member of this low-down, nefarious, filthy conspiracy . . . [for] twelve long years a voluntary conspirator against the land that I love and you love. He got his bread from the band of criminals with whom he confederated and conspired."¹⁶ Stryker introduced Chambers to the jury with a warning about his cunning and evil nature. "In the warm southern countries," Stryker remarked, "you know, where they have leprosy, sometimes you will hear on the streets perhaps among the lepers a man crying down the street, 'Unclean, unclean' at the approach of a leper. I say the same to you at the approach of this moral leper."¹⁷ Ironically, the prosecutor was dismayed at the consequences of his decision to focus attention on Chambers' testimony (and thereby on the courtroom drama). Stryker had a psychiatrist enter the courtroom with much notice and flourish and seat himself among the audience so that he could make an impromptu psychiatric profile of Chambers while the witness testified. Such antics, Murphy protested in the judge's chambers, had "reached

almost Hollywood proportions . . . with that doctor sitting right here in the courtroom "18

Murray Edelman, in commenting upon the drama of politics, has asserted that "for amateur political spectators, a small number of classic themes or myths serve repeatedly as explanations of what is shaping the political scene. . . . The world of myths is simple: it revolves around hostile plotters and benevolent leaders The language of political discussion, analysis, and debate frequently evokes these themes by personifying observed, feared, or desired trends into plotters and heroes"19 We might think of jurors as necessarily amateur legal spectators, and in a political trial such as the Hiss case, they might be expected to interpret the courtroom drama in terms of plotters and leaders. The defense attempted to portray Chambers as an evil plotter and Hiss as an honorable leader. In short, the trial was presented as a drama of false accusation. Despite the considerable evidence about the crime drama presented by the prosecution, a third of the jury seems to have understood the case in terms of the courtroom drama presented by the defense. When the judge dismissed the jury, it was hung with four people voting not guilty and eight people voting guilty.

III

The Second Trial: A Crime Drama

In retrospect, Hiss may have made a serious error when he dismissed his dynamic defense attorney Lloyd Stryker and replaced him with the mild-mannered Claude B. Cross for the second trial. This change in lawyers coincided with a shift in strategy by Thomas Murphy as he prepared for the second perjury trial of Alger Hiss. The result was a

trial which focused attention on the crime drama. The crime drama, of course, had been present in the first trial, just as it must be present in any criminal trial. As Harbinger points out, the two dramas of a trial have a "pregnant shape, one play curled up in the belly of the other."²⁰

With the beginning of the second trial on November 17, 1949, the courtroom drama faded as the crime drama was recreated.

Alistair Cooke, who observed both trials closely as a foreign correspondent for the Manchester Guardian, was particularly struck by the contrast between Stryker and Cross. Cooke characterized Cross as "a diffident sober man, a million light-years away from Mr. Stryker's fireworks."²¹ He was a "small, plodding, gray-haired man, so undemonstrative as almost to appear apologetic for taking the floor and the jury's undivided time."²² Such a person was hardly likely to command attention for the courtroom drama. At the same time, the prosecutor retreated from Chambers as the key element of his case, and instead claimed in his opening statement that he would prove Hiss guilty "by the immutable documents themselves, documents that just can't change. There they are, the documents."²³ Murphy successfully objected when Cross quoted his remark in the first trial concerning the centrality of Chambers' veracity to the prosecution case. This left Cross with the documents as the central issue; he told the jury: "If Hiss did not turn over copies or originals of State Department papers in February and March [of 1938], then there should be an acquittal."²⁴

As the second trial unfolded, the jury found itself focusing on the Scene of the 1930s, on the Agency (the stolen documents and the typewriter) and the Act (espionage), rather than upon the personalities of Hiss and Chambers in the courtroom. These two witnesses did testify, of

course, but their performances helped to transport the jury back into the crime drama. Whereas the prosecutor had not been allowed to question Chambers on his Communist activities of the 1920s and 1930s in the first trial, the judge in the second trial overruled Cross's objections to such background questions. The practical effect of this ruling was that it allowed the prosecution to reveal Chambers pilgrimage from Communism to anti-Communism with all its lies and duplicity, rather than allow the defense to reveal it.²⁵ The dramatic effect, however, was to cast Chambers' courtroom testimony into the setting of the crime drama and to lessen the impression of a forensic struggle between Hiss and Chambers as witnesses in the courtroom drama.

During the second trial the defense attempted to show that Julian Wadleigh — another former State Department official who had already admitted passing documents to the Communist Party — could have stolen the secret documents from Hiss's office and given them to Chambers.²⁶ This provided the prosecution with an opportunity to dramatize the crime of espionage. The defense had already gone over each paper with Wadleigh, but Murphy again handed him each one of the stolen documents. He denied having passed these particular documents and explained why it would not have been possible for him to have done so.²⁷ It hardly required much imagination, however, for the jury to visualize someone else handing over each document just as Thomas Murphy handed the typewritten material to the witness. Finally, the jury was invited to "see" the criminal actually type copies of the stolen documents. Murphy placed an FBI agent on the stand with the Hiss's Woodstock typewriter and had him type an entire page from the typed copy of the documents.²⁸ As a practical matter, this provided the jury with a first-hand comparison of the

two typewritten documents and it showed that the Hiss typewriter was functional. More importantly, this demonstration dramatized the Act--the actual typing of the same stolen material on the very typewriter that Hiss was alleged to have used. Thus, rather than seeing a courtroom drama of false accusation by Whittaker Chambers, the jury in the second trial saw the crime drama of betrayal by Alger Hiss.

This summary of the second trial (as with the first trial) necessarily leaves much out. Virtually all of the witnesses from the first trial testified again in the second trial, and the prosecution marshalled new witnesses to buttress its story and to attack Hiss's story of his whereabouts in 1938. The point is, however, that the focus of attention had shifted to the competing versions of the crime drama--the defense story and the prosecution story.²⁹ The crime drama dominated to the distinct disadvantage of Alger Hiss. The jury retired with copies of the stolen documents and brought back a verdict of guilty within twenty-four hours.

IV

In Closing

One of the most striking features of the Hiss case is that the courtroom drama and the crime drama did not fit together harmoniously. If Chambers (the accuser) had had Hiss's appearance, background, and prestige (and if Hiss had Chambers'), the case would have been more congruent. It still would have been a dramatic case, but one with an end. Because of this incongruity of courtroom and crime, partisans in the case--and partisans in American politics--have embraced one drama or the other and have used the outcome of the second trial either to "prove" the existence of a Communist conspiracy, or to "prove" that the excesses of the Cold War era ruined the lives of innocent men and women.³⁰ Even those people who were not involved in the case were troubled by this dramatic discord.³¹ As Richard Harbinger points out: "The trial lawyer who cannot combine these two plays [the crime drama and the courtroom

drama] into a single dramatic texture creates not a single but a dual dramatic effect This discord affects not only the men and women who make up the jury but the men and women who make up our society They all know in their hearts that something is wrong, but they may not always know in their heads what that something is, or how to set it right."³²

Certainly, the foregoing analysis does not "prove" that Hiss was convicted in the second trial in part because it featured a crime drama, although I trust that I have illustrated that such an interpretation is plausible and perhaps accurate. I hope that this discussion has supported the thesis that our understanding of courtroom communication--and human communication --can be enhanced if rhetorical critics occasionally employ a dramatic perspective. In speaking of the law, Oliver Wendell Holmes once remarked: "Most men think dramatically, not quantitatively, a fact that the rich would be wise to remember . . ."³³--and, I would add, a fact that critics of forensic discourse would be wise to remember, too.

Endnotes

¹Thurman Arnold, Fair Fights and Foul: A Dissenting Lawyer's Life (New York: Harcourt, Brace and World, 1965), pp. 321, 228, 229, and 245; emphasis added. The introductory section of this paper (I: Trial as Drama) is adapted and expanded from a portion of an earlier paper by the author; "Moral Drama and Forensic Discourse: An Analysis of the Rosenberg Spy Trial," presented at the Speech Communication Association Convention, Washington, D.C., Dec. 3, 1977.

²At the outset of this paper I should clearly state that it is my conclusion that Alger Hiss was guilty of perjury. Whatever doubts exist about the fairness of his trial or the atmosphere in which he was tried, Professor Weinstein has demonstrated that Hiss was guilty beyond a reasonable doubt; see Allen Weinstein, Perjury: The Hiss-Chambers Case (New York: Alfred A. Knopf, 1978). Not everyone shares this conclusion; for example, see Edith Tiger, ed., In Re Alger Hiss: Petition for a Writ of Error Coram Nobis (New York: Hill and Wang, 1979). Also see the exchange of views in The Nation, April 8, 1978; The New Republic, April 8, 1978; The Nation, April 22, 1978; The New Republic, April 29, 1978; The Nation, May 6, 1978; The New Republic, May 13, 1978; The Nation, May 13, 1978; and The Nation, June 17, 1978.

Because I have not had access to transcripts of the two Hiss trials, I have relied upon newspaper accounts and (most important) upon works by Weinstein and Alistair Cooke, both of whom based their reports upon the trial transcripts. Weinstein brought to his reading of the transcripts a comprehensive knowledge of the facts of the case, while Cooke had the advantage of reading the transcripts in light of his personal observation of the trials. Weinstein's book is cited above; Cooke's book is A Generation on Trial: U.S.A. v. Alger Hiss (New York: Alfred A. Knopf, 1950).

³A dramatic perspective on courtroom rhetoric owes much to the thought of Kenneth Burke and the works of scholars influenced by Burke. In part, I came to appreciate the dramatic quality of trials because of Dale Hample's essay on legal realism and trial rhetoric: "Motives in Law: An Adaptation of Legal Realism," Journal of the American Forensic Association, 15 (Winter 1979), 156-168. An earlier version of this essay was presented as a paper at the 1977 Speech Communication Association Convention, Washington, D.C. For another helpful discussion of the dramatic character of trials which is grounded in Kenneth Burke's writings, see Anita Shmukler, "Studying the Chicago Seven Trial: A Challenge in Rhetorical Methodology," a paper presented at the 35th Annual Convention of the Speech Communication Association of Pennsylvania, Pittsburgh, PA, Oct. 17-19, 1974

⁴See Hugh Dalziel Duncan, Communication and Social Order (New York: The Bedminster Press, 1962), pp. 339 ff. Edelman is cited below.

⁵Jacob A. Stein, "The Rhetorical Question and Other Forensic Speculations," Litigation: The Journal of the Section of Litigation, American Bar Association, 3 (Summer 1977), 23.

⁶Kenneth Burke, A Grammar of Motives (New York: Prentice-Hall, 1945, p.3.

⁷Murray Edelman, The Symbolic Uses of Politics (Urbana: University of Illinois Press, 1964), p. 96, 99.

⁸David Mellinkoff, Language and the Law (Boston: Little, Brown, and Company, 1963), pp. 11, 24, 19.

⁹See Jane Blankenship, "The Search for the 1972 Democratic Nomination: A Metaphorical Perspective," in Rhetoric and Communication: Studies in the University of Illinois and Tradition, eds. Jane Blankenship and Hermann G. Stelzner (Urbana: University of Illinois Press, 1976), pp. 236-260.

¹⁰See Martin Maloney, "Clarence Darrow," in The History and Criticism of American Public Address, III, ed. Marie K. Hochmuth [Nichols] (1955; rpt., New York: Russell and Russell, 1965), pp. 262-312. Darrow's defense of Leopold and Loeb was an instance of this type of competition of dramas.

¹¹Richard Harbinger, "Trial By Drama," Judicature, 55 (Oct. 1971), 122. I am indebted to Professor Ingeborg Chaly for bringing this article to my attention.

¹²Quoted in Weinstein, Perjury, p. 413.

¹³Ibid.

¹⁴Harbinger, "Trial By Drama," p. 126.

¹⁵See the summation speeches of Darrow and Crowe in the Leopold-Loeb case which, are conveniently available in Famous American Jury Speeches, ed. Frederick C. Hicks (St. Paul, Minn.: West Publishing Co., 1925). Harbinger remarks that "a courtroom drama stars the prosecuting attorney and the defense attorney, and the title page gives them top billing. The starring attorneys get most of the dialogue and the action and they do most of the emoting and agonizing. It is only in a legal sense that the defendants or the people win or lose; in a dramatic sense the attorneys win or lose." See "Trial By Drama," p. 124.

¹⁶Quoted by Weinstein, Perjury, p. 414.

¹⁷Ibid., p. 415

¹⁸Ibid., p. 421

¹⁹Murray Edelman, Politics as Symbolic Action (Chicago: Markham Publishing Company, 1971), p. 77.

²⁰Harbinger, "Trial By Drama," p. 123.

²¹Cooke, A Generation on Trial, p. 282.

²²Ibid., p. 285.

²³Quoted in Weinstein, Perjury, p. 472; also see Cooke, A Generation on Trial, p. 285.

²⁴Quoted in Weinstein, Perjury, p. 473

²⁵See Cooke, A Generation on Trial, pp. 303, 285.

²⁶Ibid., p. 286.

²⁷Weinstein, Perjury, p. 476; also see Cooke, A Generation on Trial, pp. 320-322.

²⁸Weinstein, Perjury, pp. 478-479; and Cooke, A Generation on Trial, p. 317.

²⁹When we speak of each side in a trial having "told its story," we are referring to the crime drama. For an analysis of courtroom communication from the perspective of such "storytelling," see W. Lance Bennett, "Storytelling in Criminal Trials: A Model of Social Judgment," Quarterly Journal of Speech, 64 (February 1978), 1-22. Bennett's thesis is that the "stories" are the basis of jury decisions. Where Harbinger assumes

that juries decide on crime dramas on an emotional basis, Bennett's analysis suggests that juries employ a rational (if informal) method in evaluating the stories told in the trial and in deciding which story to accept.

³⁰ Both of these propositions, of course, are quite probably true and can be demonstrated without reference to the Hiss case. Yet, as Weinstein has pointed out, the Hiss case came to symbolize such evils for the partisans. See Chapter 14, "Cold War Iconography: Alger Hiss as Symbol and Myth," in Perjury, pp. 505-523.

³¹ For example, see Alistair Cooke's account of his personal reactions in A Generation on Trial, pp. 337-341.

³² Harbinger, "Trial By Drama, " pp. 122-123.

³³ Quoted in Harbinger, "Trial By Drama, " p. 128.